INDEX.

	PAGE
Opinion Below	1
Question Presented	2
Statutes Involved	2
Argument	4
I—There was no denial of due process of law granted by the Fourteenth Amendment to the Constitution	
Conclusion	5

Statutes And Cases Cited.

Section 58, Illinois Public Utilities Act (Ill. Rev. Stat. 1963, ch. 111-2/3, § 62)	2
Section 68, Illinois Public Utilities Act (Ill. Rev. Stat. 1963, ch. 111-2/3, §72)	2, 4
Galt v. Illinois Commerce Com., 28 Ill. 2d 501	4
Forest Preserve District of DuPage Co. v. Illinois Commerce Com., 12 Ill. 2d 319	4
Chicago Junction Railway Co. v. Illinois Commerce Com., 412 Ill. 579	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

NO. 852

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

Petitioner,

vs.

ILLINOIS COMMERCE COMMISSION ex rel. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, DIVISION OF HIGHWAYS; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; NORTHWESTERN STEEL AND WIRE COMPANY; and THE CITY OF STERLING, WHITESIDE COUNTY, ILLINOIS,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of Illinois.

APPELLEE'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Illinois affirming the order of the Illinois Commerce Commission is reported in 33 Ill. 2d 274, 211 N. E. 2d 279. Rehearing was denied on November 18, 1965. This Petition for *Certiorari* followed.

QUESTION PRESENTED

WHETHER DUE PROCESS WAS DENIED BY THE FORM OF THE OPINION RENDERED BY THE ILLINOIS SUPREME COURT.

STATUTES INVOLVED

The proceeding before the Illinois Commerce Commission was initiated pursuant to Section 58 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1963, ch. 111 2/3, sec. 62) which is correctly set out in the Petition for *Certiorari*. The appeal from the order of the Illinois Commerce Commission was governed by Section 68 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1963, ch. 111 2/3, sec. 72), the pertinent part of which provides as follows:

> ". . . No new or additional evidence may be introduced in any proceeding upon appeal from a rule, regulation, order or decision of the Commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the Commission as certified to by it. The findings and conclusions of the Commission on questions of fact shall be held prima facie to be true and as found by the Commission; and a rule, regulation, order or decision of the Commission shall not be set aside unless it clearly appears that the finding of the Commission was against the manifest weight of the evidence presented to or before the Commission for and against such rule, regulation, order or decision, or that the same was without the jurisdiction of the Commission. If it appears that the Commission failed to receive evidence properly proffered, on a hearing or a rehearing, or an application therefor, the court shall remand the case to the Commission with instructions to receive the testimony so proffered and rejected, and to enter a new order based upon the evidence theretofore taken, and such new evidence

as it is directed to receive, unless it shall appear that such new evidence would not be controlling, in which case the court shall so find in its order. Rules, regulations, orders or decisions of the Commission shall be held to be prima facie reasonable, and the burden of proof upon all issues raised by the appeal shall be upon the person or corporation appealing from such rules, regulations, orders or decisions. . . ."

ARGUMENT

THERE WAS NO DENIAL OF DUE PROCESS OF LAW GRANTED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

Petitioner contends that the opinion of the Illinois Supreme Court constitutes a denial of due process because the opinion did not respond to the specific issues raised in Petitioner's brief to that Court. The points advanced by the Petitioner as grounds for setting aside the Commission's order (set out at page 3 of Petition for *Certiorari*) were directed to specific findings which were alleged to be contrary to the manifest weight of the evidence. Thus, the only issue on which the Illinois Supreme Court was required to rule as established by Section 68 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1963, ch. 111 2/3, § 72) was whether the findings on which the Commission based its order were clearly against the manifest weight of the evidence. *Galt* v. *Illinois Commerce Com.*, 28 Ill. 2d 501; *Forest Preserve District of Du Page Co.* v. *Illinois Commerce Com.*, 12 Ill. 2d 319; *Chicago Junction Railway Co.* v. *Illinois Commerce Com.*, 412 Ill. 579. The Illinois Supreme Court opinion recites that the entire record made before the Commission was examined and that in the Court's opinion the findings were not against the manifest weight of the evidence. Because this was the only issue to be determined, the Court's opinion is proper and complete. Even a *per curiam* decision of a court is not unconstitutional; therefore, clearly the opinion and order in question were valid.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Room 900,
Chicago 1, Illinois (FI 6-2000),

Attorney for Appellee,
Illinois Commerce Commission

EDWARD G. FINNEGAN,
Assistant Attorney General,
Of Counsel.